

**BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: July 20, 21, 2005

Division: Public Works

Bulk Item: Yes X No

Department: Facilities Maintenance *J.V.*

Staff Contact Person: Miguel Carbonell

AGENDA ITEM WORDING: Approval of a Consent to Assignment of Lease with Meghan Cole d/b/a Yoga By The Sea, Assignor, and Nancy Curran, d/b/a Yoga On The Beach, Assignee, to license the use of the platform at Higgs Beach, Key West, Florida.

ITEM BACKGROUND: In accordance to paragraph 8 of the original Facilities Use Agreement dated July 14, 2004, Meghan Cole, d/b/a Yoga By The Sea, may elect to assign, transfer, convey or sublet the Facilities Use Agreement only upon previous written consent of the Board of County Commissioners.

PREVIOUS RELEVANT BOCC ACTION: On June 14, 2000, Yoga By The Sea received Board approval to use the platform at Higgs Beach. On April 17, 2002, the Board granted approval to increase classes from 7 per week to 11 per week, from 1 ½ hour sessions to 2 hour sessions, and from \$10.00 per session to a flat fee of \$400.00 per month. On July 14, 2004, the Board approved a Facilities Use Agreement for May 1, 2004 through October 31, 2004, and each May 1 through October 31 thereafter to pay the County \$120.00 per month for 3 classes per week (each class not to exceed 1 ½ hours); on November 1, 2004, the fee shall be \$400 per month for 11 classes per week.

CONTRACT/AGREEMENT CHANGES: Consent to Assignment to Nancy Curran, d/b/a Yoga On The Beach.

STAFF RECOMMENDATIONS: Approval as stated above.

TOTAL COST: N/A

BUDGETED: Yes N/A No

COST TO COUNTY: N/A

SOURCE OF FUNDS: Revenue

REVENUE PRODUCING: Yes X No **AMOUNT PER MONTH** \$120/\$400 **YEAR**

APPROVED BY: County Atty OMB/Purchasing Risk Management

DIVISION DIRECTOR APPROVAL:



Dent Pierce

DOCUMENTATION: Included X Not Required

DISPOSITION:

AGENDA ITEM #

MONROE COUNTY BOARD OF COUNTY COMMISSIONERS

CONTRACT SUMMARY

Contract with: Nancy Curran, d/b/a Contract #
Yoga On The Beach
 Effective Date: August 1, 2005
 Expiration Date: July 31, 2006

Contract Purpose/Description:

Consent to Assignment of Lease with Nancy Curran, d/b/a Yoga On The Beach for the purpose of operating Yoga classes at the Higgs Beach platform.

Contract Manager: Miguel Carbonell 4385 Facilities Maint./Parks & Rec.
(Name) (Ext.) #4
(Department/Stop #)

for BOCC meeting on July 20, 2005 Agenda Deadline: July 5, 2005

CONTRACT COSTS

Total Dollar Value of Contract: \$ Revenue-producing Current Year Portion: \$ 2,120.00
 Budgeted? Yes ☐ No ☐ Account Codes:
 Grant: \$
 County Match: \$

ADDITIONAL COSTS

Estimated Ongoing Costs: \$ /yr For:
 (Not included in dollar value above) (eg. maintenance, utilities, janitorial, salaries, etc.)

CONTRACT REVIEW

	Date In	Changes Needed	Reviewer	Date Out
Division Director	<u> </u>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<u> </u>	<u>6/28/05</u>
Risk Management	<u>6/6/05</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>M. Slomka</u>	<u>6/6/05</u>
O.M.B./Purchasing	<u>6/7/05</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u> </u>	<u>6/10/05</u>
County Attorney	<u>6/6/05</u>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	<u> </u>	<u>6/7/05</u>

Comments: Per sec. "Contract Costs" figures don't correlate w/
figures in body of lease - please correct or clarify
current year portion is \$ expended to date the year

CONSENT TO ASSIGNMENT OF LEASE

This Consent to Assignment is entered into this July 20, 2005, between the COUNTY OF MONROE, a political subdivision of the State of Florida, hereafter County and Meghan Cole d/b/a Yoga By The Sea, hereafter Assignor, and Nancy Curran d/b/a Yoga On The Beach, hereafter Assignee, the parties agreeing as follows:

1. On June 14, 2000, Yoga By The Sea received Board approval to use the platform at Higgs Beach. On April 17, 2002, the Board granted approval to increase classes from 7 per week to 11 per week, from 1 ½ hour sessions to 2 hour sessions, and from \$10.00 per session to a flat fee of \$400 per month. On July 14, 2004, the Board approved a Facilities Use Agreement for May 1, 2004 through October 31, 2004, and each May 1 through October 31 thereafter to pay the County \$120 per month for 3 classes per week (each class not to exceed 1 ½ hours); on November 1, 2004, the fee shall be \$400 per month for 11 classes per week.
2. Paragraph 8 of the Facilities Use Agreement provides that Yoga ByThe Sea may elect to assign, transfer, convey or sublet only upon previous written consent of the Board of County Commissioners.
3. The Assignor and Assignee have entered into a contract for sale/purchase of the business which contract includes an assignment to Assignee of all the Assignor's rights, title and interest in the Facilities Use Agreement.
4. In consideration of such consent, the Assignee agrees to be bound by all the terms and conditions of the Facilities Use Agreement.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seal the day and year first written above.

(Seal)
Attest: DANNY L. KOLHAGE, CLERK

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____
Mayor Dixie M. Spehar

ASSIGNOR: MEGHAN COLE, D/B/A
YOGA BY THE SEA

ASSIGNEE: NANCY CURRAN, D/B/A
YOGA ON THE BEACH

By: Meghan Cole

By: Nancy Curran

MONROE COUNTY ATTORNEY

APPROVED AS TO FORM:

John R. Collins
JOHN R. COLLINS

COUNTY ATTORNEY

Date 07/20/05

Facilities Use Agreement

THIS AGREEMENT is entered into this 14 day of July, 2004 by and between BOARD OF COUNTY COMMISSIONERS, MONROE COUNTY, FLORIDA, (BOCC) and Meghan Cole d/b/a Yoga by the Sea, and whose address is PO Box 915, Key West, FL 33041.

WHEREAS, Yoga by the Sea has been using the platform at Higgs Beach for the past four years pursuant to an informal agreement; and

WHEREAS, it is desired to formalize said agreement and provide for modification during the summer months;

NOW, THEREFORE, and in consideration of the mutual covenants, contained herein the parties agree as follows:

1. The BOCC hereby licenses Meghan Cole d/b/a Yoga by the Sea (Hereafter "Yoga by the Sea") to use the platform at Higgs Beach, Key West, Florida, on a month-to-month basis, commencing May 1, 2004, and terminating upon either party giving written notice of termination to the other, for or without cause, at least fifteen (15) days in advance of the termination date.
- 2(a). For the period May 1, 2004 through October 31, 2004, and each May 1 through October 31 thereafter, Yoga by the Sea shall pay to County a monthly fee of one hundred twenty dollars (\$120.00), for the use of said platform for three classes per week each class not to exceed one and a half (1-1/2) hours. Commencing November 1, 2004, Yoga by the Sea shall pay a monthly fee of four hundred dollars (\$400.00) for use of said platform for eleven classes per week.
- (b). The Facilities Use Agreement/contract amount agreed to herein *might* be adjusted annually in accordance with the percentage change in the Consumer Price Index for all urban consumers (CPI-U) for the most recent 12 months available.
3. Indemnification and Hold Harmless: Yoga by the Sea covenants and agrees to indemnify and hold harmless Monroe County Board of County Commissioners from any and all claims for bodily injury (including death), personal injury, and property damage (including property owned by Monroe County) and any other losses, damages, and expenses (including attorney's fees) which arise out of, in connection with, or by reason of Yoga by the Sea utilizing the property governed by this Facilities Use Agreement. The extent of liability is in no way limited to, reduced, or lessened by the insurance requirements contained elsewhere within this agreement.

4. Insurance Requirements: Recognizing that the work governed by this contract involves the provision of classes related to physical education for profit, Yoga by the Sea shall purchase and maintain throughout the life of the contract, insurance covering the activity specified in the contract.

The Monroe County Board of County Commissioners shall be named as Additional Insured.

The minimum limits of liability shall be \$300,000 per occurrence.

General Liability: Prior to the commencement of work governed by this contract, Yoga by the Sea shall obtain General Liability Insurance or provide proof of self-insurance. Coverage shall be maintained throughout the life of the contract and include, as a minimum:

- Premises Operations
- Products and Completed Operations
- Blanket Contractual Liability
- Personal Injury Liability
- Expanded Definition of Property Damage

The minimum limits acceptable shall be:

\$300,000 Combined Single Limit (CSL)

If split limits are provided, the minimum limits acceptable shall be:

- \$ 100,000 per Person
- \$ 300,000 per Occurrence
- \$ 50,000 Property Damage

An Occurrence Form policy is preferred. If coverage is provided on a Claims Made policy, its provisions should include coverage for claims filed on or after the effective date of this contract. In addition, the period for which claims may be reported should extend for a minimum of twelve (12) months following the acceptance of work by the County.

The Monroe County Board of County Commissioners shall be named as Additional Insured on all policies issued to satisfy the above requirements.

5. Permits: Yoga by the Sea will secure all required permits and licenses, including but not limited to occupational licenses.

6. Independent Contractor: It is the intent of the parties hereto that Yoga by the Sea shall be legally considered as an independent contractor and that neither it nor its employees shall, under any circumstances, be considered servants or agents of the BOCC and the BOCC shall at no time be legally responsible for any negligence on the part of said Yoga by the Sea, its employees or agents, resulting in either bodily or personal injury or property damage to any individual, firm, or corporation.

7. Disclosure: Yoga by the Sea shall be required to list any or all potential conflicts or interest, as defined by Florida Statute 112 and Monroe County Code. Yoga by the Sea shall disclose to the BOCC and TDC all actual or proposed conflicts of interest,

financial or otherwise, direct or indirect, involving any client's interest which may conflict with the interest of the BOCC and TDC.

8. Assignment: Yoga by the Sea shall not assign, transfer, convey, sublet or otherwise dispose of this agreement, or of any or all of its right, title or interest therein, or her power to execute such agreement to any person, company or corporation without prior consent of the BOCC.
9. Compliance with laws - Nondiscrimination: Yoga by the Sea shall comply with all federal, state and local laws and ordinances applicable to the work or payment for work thereof, and shall not discriminate on the grounds of race, color, religion, sex, age, gender identification, or national origin in the performance of work under this Agreement. This Agreement shall be subject to all federal, state, and local laws and ordinances.
10. Governing Law/Venue: This Agreement shall be governed and construed by and in accordance with the laws of the State of Florida and the County of Monroe and Federal law. Venue for any dispute concerning this Agreement shall be in Monroe County.
11. Severability: If any provision of this Agreement shall be held by a Court of competent jurisdiction to be invalid or unenforceable, the remaining provisions shall not be affected thereby; and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
12. Ethics Clause: Yoga by the Sea warrants that it has not employed, retained or otherwise had act on its behalf, any former County officer or employee in violation of Section 2 or Ordinance No. 10-1990 or any County officer or employee in violation of Section 3 of Ordinance No. 10-1990. For breach or violation of the provision the County may, at its discretion, terminate this agreement without liability and may also, at its discretion, deduct from the agreement or purchase price, or otherwise recover, the full amount of any fee, commission, percentage, gift, or consideration paid to the former or present County officer or employee.
13. Public Entity Crimes: "A person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for period of 36 months from the date of being placed on the convicted vendor list."

14. Entire Agreement: The parties agree that the Agreement above constitutes the entire agreement between the BOCC and Yoga by the Sea.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written.

(SEAL)

(SEAL)

Attest: DANNY L. KOLHAGE, Clerk

By *Daniel C. DeSantis*
Deputy Clerk

Yoga by the Sea

By *Meghan Cole*
MEGHAN COLE

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By *Murray & Nelson*
Mayor/Chairman

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM:

Suzanne A. Hutton
SUZANNE A. HUTTON
ASSISTANT COUNTY ATTORNEY
Date *6/10/04*

DANNY L. KOLHAGE
CLERK
MONROE COUNTY, FLA.

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